

117TH CONGRESS  
1ST SESSION

# H. R. 6083

To prohibit the use of exploitative and deceptive practices by large online operators and to promote consumer welfare in the use of behavioral research by such providers.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 30, 2021

Ms. BLUNT ROCHESTER (for herself and Mr. GONZALEZ of Ohio) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To prohibit the use of exploitative and deceptive practices by large online operators and to promote consumer welfare in the use of behavioral research by such providers.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Deceptive Experiences  
5       To Online Users Reduction Act” or the “DETOUR Act”.

6       **SEC. 2. DEFINITIONS.**

7       In this Act:

8                   (1) BEHAVIORAL OR PSYCHOLOGICAL EXPERI-  
9                   MENT OR RESEARCH.—The term “behavioral or psy-

1       chological experiment or research” means the study,  
2       including through human experimentation, of overt  
3       or observable actions or mental phenomena inferred  
4       from behavior, including interactions between and  
5       among individuals and the activities of social groups.

6                 (2) CHILD.—The term “child” has the meaning  
7       given such term in section 1302 of the Children’s  
8       Online Privacy Protection Act of 1998 (15 U.S.C.  
9       6501).

10               (3) COMMISSION.—The term “Commission”  
11       means the Federal Trade Commission.

12               (4) COMPULSIVE USAGE.—The term “compul-  
13       sive usage” means any response stimulated by exter-  
14       nal factors that causes an individual to engage in re-  
15       petitive behavior causing psychological distress, loss  
16       of control, anxiety, depression, or harmful stress re-  
17       sponses.

18               (5) INDEPENDENT REVIEW BOARD.—The term  
19       “independent review board” means a board, com-  
20       mittee, or other group that serves to protect the wel-  
21       fare and privacy of users and is formally designated  
22       by a large online operator to review, to approve the  
23       initiation of, and to conduct periodic review of, any  
24       research by, or at the direction or discretion of, a  
25       large online operator, involving human subjects.

1                             (6) INFORMED CONSENT.—The term “informed  
2                             consent”—

3                                 (A) means the express, affirmative consent  
4                             freely given by a user, in which such user is  
5                             provided a clear and conspicuous description—

6                                 (i) of a process by which a user is  
7                             provided adequate information prior to  
8                             being included in any behavioral or psycho-  
9                             logical experiment or study in order to  
10                             allow for an informed decision about vol-  
11                             untary participation in such a behavioral  
12                             or psychological research experiment or re-  
13                             search; and

14                                 (ii) ensuring the understanding by  
15                             such user of the furnished information and  
16                             any associated benefits, risks, or con-  
17                             sequences of participation prior to obtain-  
18                             ing the voluntary agreement to participate  
19                             by the user; and

20                             (B) does not include—

21                                 (i) the consent of a child; or  
22                                 (ii) the consent to a provision con-  
23                             tained in a general contract or service  
24                             agreement.

1                             (7) LARGE ONLINE OPERATOR.—The term  
2       “large online operator” means any person that—

3                             (A) provides an online service;  
4                             (B) has more than 100,000,000 authenti-  
5       cated users of an online service in any 30-day  
6       period; and

7                             (C) is subject to the jurisdiction of the  
8       Commission under the Federal Trade Commis-  
9       sion Act (15 U.S.C. 41 et seq.).

10                          (8) ONLINE SERVICE.—The term “online serv-  
11       ice” means a website or a service, other than an  
12       internet access service, that is made available to the  
13       public over the internet, including a social network,  
14       a search engine, or an email service.

15                          (9) USER.—The term “user” means any indi-  
16       vidual who engages with an online service.

17                          (10) USER DATA.—The term “user data”  
18       means any information relating to an identified or  
19       identifiable individual user, whether directly sub-  
20       mitted to the large online operator by the user or de-  
21       rived from the observed activity of the user by the  
22       large online operator.

1     **SEC. 3. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**  
2                 **LATING TO THE MANIPULATION OF USER**  
3                 **INTERFACES.**

4     (a) CONDUCT PROHIBITED.—It shall be unlawful for  
5     any large online operator—

6                 (1) to design, modify, or manipulate a user  
7     interface with the purpose or substantial effect of  
8     obscuring, subverting, or impairing user autonomy,  
9     decision making, or choice to obtain consent or user  
10    data;

11                 (2) to subdivide or segment consumers of online  
12    services into groups for the purposes of behavioral or  
13    psychological experiment or research of users of an  
14    online service, except with the informed consent of  
15    each user involved; or

16                 (3) to design, modify, or manipulate a user  
17    interface on a website or online service, or portion  
18    thereof, that is directed to an individual under the  
19    age of 13, with the purpose or substantial effect of  
20    causing, increasing, or encouraging compulsive  
21    usage, inclusive of video auto-play functions initiated  
22    without the consent of a user.

23     (b) DUTIES OF LARGE ONLINE OPERATORS.—Any  
24    large online operator that engages in any form of behav-  
25    ioral or psychological experiment or research based on the  
26    activity or data of its users shall do each of the following:

1                         (1) The large online operator shall disclose to  
2                         its users on a routine basis, but not less than once  
3                         each 90 days, the general purpose of any such be-  
4                         havioral or psychological experiment or research, to  
5                         each user whose user data is or was during the pre-  
6                         vious 90-day period subject to or included in any be-  
7                         havioral or psychological experiment or research.

8                         (2) The large online operator shall disclose to  
9                         the public on a routine basis, but not less than once  
10                         each 90 days, any experiments or studies with the  
11                         purposes of promoting engagement or product con-  
12                         version being currently undertaken, or concluded  
13                         since the prior disclosure.

14                         (3) The large online operator shall present the  
15                         disclosures described in paragraphs (1) and (2) in a  
16                         manner that—

17                                 (A) is clear, conspicuous, context-appro-  
18                         priate, and easily accessible; and

19                                 (B) is not deceptively obscured.

20                         (4)(A) Subject to subparagraph (B), the large  
21                         online operator shall remove and delete all data ob-  
22                         tained from affected users in the course of a behav-  
23                         ioral or psychological experiment or research if the  
24                         large online operator—

(ii) is unable to obtain within 2 business days of such determination the appropriate informed consent.

9                   (B) If the large online operator is unable to re-  
10                  move and delete user data pursuant to subparagraph  
11                  (A), the large online operator shall discontinue the  
12                  related behavioral or psychological experiment or re-  
13                  search.

(A) the names and résumés of every Board member;

(D) any compensation provided to board members; and

12 (E) any conflict of interest that might  
13 exist concerning a board member's participation  
14 in the Board.

15 (c) REGISTERED PROFESSIONAL STANDARDS

## 16 BODY.—

1 for protecting the welfare of users of large online op-  
2 erators.

3 (2) PROFESSIONAL STANDARDS BODY.—An as-  
4 sociation of large online operators may not register  
5 as a professional standards body unless the Commis-  
6 sion determines that—

7 (A) the association is so organized and has  
8 the capacity to enforce compliance by its mem-  
9 bers and persons associated with its members,  
10 with the provisions of this Act;

11 (B) the rules of the association provide  
12 that any large online operator may become a  
13 member of such association;

14 (C) the rules of the association ensure a  
15 fair representation of its members in the selec-  
16 tion of its directors and administration of its  
17 affairs and provide that one or more directors  
18 shall be representative of users and not be asso-  
19 ciated with, or receive any direct or indirect  
20 funding from, a member of the association or  
21 any large online operator;

22 (D) the rules of the association are de-  
23 signed to prevent exploitative and manipulative  
24 acts or practices, to promote transparent and  
25 fair principles of technology development and

1           design, to promote research in keeping with  
2           best practices of study design and informed  
3           consent, and to continually evaluate industry  
4           practices and issue contractually binding guid-  
5           ance consistent with the objectives of this Act;

6                 (E) the rules of the association provide  
7           that its members and persons associated with  
8           its members shall be appropriately disciplined  
9           for violation of any provision of this Act, the  
10          rules or regulations thereunder, or the rules of  
11          the association, by expulsion, suspension, limi-  
12          tation of activities, functions, fine, censure,  
13          being suspended or barred from being associ-  
14          ated with a member, or any other appropriate  
15          sanction; and

16                 (F) the rules of the association are in ac-  
17          cordance with the provisions of this Act, and, in  
18          general, provide a fair procedure for the dis-  
19          ciplining of members and persons associated  
20          with members, the denial of membership to any  
21          person seeking membership therein, the barring  
22          of any person from becoming associated with a  
23          member thereof, and the prohibition or limita-  
24          tion by the association of any person with re-

1                   spect to access to services offered by the asso-  
2                   ciation or a member thereof.

3                   (3) RESPONSIBILITIES AND ACTIVITIES.—

4                   (A) BRIGHT-LINE RULES.—An association  
5                   shall—

6                         (i) develop, on a continuing basis,  
7                         guidance and bright-line rules for the de-  
8                         velopment and design of technology prod-  
9                         ucts of large online operators consistent  
10                       with subparagraph (B); and  
11                         (ii) notify the Commission of such  
12                         guidance and bright-line rules.

13                   (B) SAFE HARBORS.—In formulating guid-  
14                   ance under subparagraph (A), the association  
15                   shall define conduct that does not have the pur-  
16                   pose or substantial effect of subverting or im-  
17                   pairing user autonomy, decision making, or  
18                   choice, or of cultivating compulsive usage for a  
19                   child such as—

20                         (i) de minimis user interface changes  
21                         derived from testing consumer preferences,  
22                         including different styles, layouts, or text,  
23                         where such changes are not done with the  
24                         purpose of obtaining user consent or user  
25                         data;

4 (iii) establishing default settings that  
5 provide enhanced privacy protection to  
6 users or otherwise enhance their autonomy  
7 and decision-making ability.

8 (d) ENFORCEMENT BY THE COMMISSION.—

9                   (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
10                 TICES.—

21 (i) has the purpose, or substantial ef-  
22 fect, of subverting or impairing user auton-  
23 omy, decision making, or choice to obtain  
24 consent or user data; or

(ii) has the purpose, or substantial effect, of cultivating compulsive usage by a child.

## 4 (2) POWERS OF THE COMMISSION.—

(B) PRIVILEGES AND IMMUNITIES.—Any person who violates this Act or a regulation promulgated under this Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(D) REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Commission shall promulgate regulations under

1           section 553 of title 5, United States Code,  
2           that—

- (i) establish rules and procedures for obtaining the informed consent of users;

(ii) establish rules for the registration, formation, oversight, and management of the independent review boards, including standards that ensure effective independence of such entities from improper or undue influence by a large online operator;

(iii) establish rules for the registration, formation, oversight, and management of professional standards bodies, including procedures for the regular oversight of such bodies and revocation of their designation;

(iv) in consultation with a professional standards body established under subsection (c), define conduct that does not have the purpose or substantial effect of subverting or impairing user autonomy, decision making, or choice, or of cultivating compulsive usage for a child such as—

(I) de minimis user interface changes derived from testing con-

sumer preferences, including different styles, layouts, or text, where such changes are not done with the purpose of obtaining user consent or user data;

(II) algorithms or data outputs outside the control of a large online operator or its affiliates; and

9 (III) establishing default settings  
10 that provide enhanced privacy protec-  
11 tion to users or otherwise enhance  
12 their autonomy and decision-making  
13 ability.

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